

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARMANDO HERNANDEZ,

Plaintiff,

v.

IFEOMA OGBUEHI, et al.,

Defendants.

No. 1:20-cv-01019-ADA-SAB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT

(ECF No. 50, 63)

Plaintiff Armando Hernandez is proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 2, 2023, the Magistrate Judge issued findings and recommendations, recommending that the Court grant Defendants' motion for summary judgment. (ECF No. 63.) Plaintiff filed objections on June 23, 2023, and Defendants responded on July 10, 2023. (ECF Nos. 68, 69.)

In his objections, Plaintiff states that he has been unable to contact his primary care physician to procure "further evidence or sworn affidavits regarding Plaintiff's medical conditions." (ECF No. 68 at 1.) Even without such evidence, he claims that "continuation of the same treatment in the face of obvious failure . . . despite numerous complaints over a period of months and a visibly deteriorating condition" constituted deliberate indifference of a serious

1 medical need. (*Id.* at 2.) As Defendants point out in their response, however, Plaintiff provides
2 no legal authority for his arguments or identifies any flaws in the Magistrate Judge's reasoning.
3 (*See* ECF No. 69 at 2.) Plaintiff's objections amount to a conclusory rejection of the findings and
4 recommendations. In fact, his statement that he was unable to acquire additional medical
5 evidence and testimony implicitly acknowledges that the record as it stands supports the
6 Magistrate Judge's conclusions. Had Plaintiff believed that he needed more time to acquire
7 necessary discovery or that Defendants' motion for summary judgment was premature, he should
8 have filed a declaration pursuant to Federal Rule of Civil Procedure 56(d). Plaintiff did not file
9 such a declaration, and it would not be proper for the Court to consider such a request at this
10 point. *See Ashton-Tate Corp. v. Ross*, 916 F.2d 516, 520 (9th Cir. 1990).

11 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
12 de novo review of this case. Having carefully reviewed the entire file, including Plaintiff's
13 objections, the Court concludes the findings and recommendations are supported by the record
14 and proper analysis.

15 Accordingly,

- 16 1. The findings and recommendations issued on March 2, 2023, (ECF No. 63), are
17 adopted in full;
 - 18 2. Defendants' motion for summary judgment, (ECF No. 50), is granted; and
 - 19 3. The Clerk of Court shall enter judgment in favor of Defendants.
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22 IT IS SO ORDERED.

23 Dated: September 26, 2023

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UNITED STATES DISTRICT JUDGE